

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

L.J., et al.,

*

Plaintiffs,

*

v.

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Civil Action No. JFM-84-4409

RUTH MASSINGA, et al.,

*

Defendants.

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**DECLARATION OF RHONDA B. LIPKIN IN SUPPORT OF
APPROVAL OF PROPOSED MODIFIED CONSENT DECREE**

I, Rhonda B. Lipkin, do solemnly affirm upon personal knowledge and under penalty of perjury that the following statements are true and correct.

1. I am over eighteen years old and am competent to testify to the matters set forth in this Declaration. I make this Declaration in support of the Joint Motion for Preliminary Approval of Modified Consent Decree, for Notice and Hearing, and for Final Approval of Modified Consent Decree.

2. I am in my twenty-third year of law practice, having first been admitted to practice by the Court of Appeals of Maryland in January 1986. Since August 1, 2005, I have been the Child Welfare Advocacy Fellow at the Public Justice Center, with my primary responsibility being counsel to Plaintiffs in *L.J. v. Massinga*. I have more than twenty years of experience in child welfare law and practice, including direct representation of children in state dependency (Child in Need of Assistance (“CINA”) and guardianship and adoption) proceedings; drafting state laws and rules governing child welfare; training judges, masters and attorneys on these laws and rules; and, from 1997 - 2005, managing the Legal Aid Bureau’s

contract with the Department of Human Resources to represent children in dependency proceedings throughout the state of Maryland. In addition, I previously have participated in class action litigation in federal courts in Maryland, North Carolina and several other jurisdictions.

3. The Public Justice Center has been active in class action civil rights litigation since its founding in 1985. To date, the Public Justice Center has been lead or co-counsel in numerous successful class actions, including cases involving civil rights, prisoner's rights, homeless children's education, employment discrimination, and violations of state and federal wage laws. The Public Justice Center's Legal Director, who provides me with supervision and support, is Debra Gardner, an attorney with twenty-five years of experience who has been lead or co-counsel in a number of federal class action cases.

4. I agree with and hereby adopt the statements set forth in paragraphs 11 – 17 of the Declaration of Mitchell Y. Mirviss, Attachment C to the Memorandum in support of the Joint Motion.

5. As set forth more specifically below and in the Memorandum in support of the Joint Motion, the proposed Modified Consent Decree was the result of extensive, non-collusive, arms-length negotiations by experienced counsel. Since October 2008, the parties have held numerous meetings to negotiate the proposed Modified Consent Decree and exchanged many drafts. Both sides have zealously represented the positions of their clients. The immediate and realized benefit to the class of the proposed Modified Consent Decree far outweighs the possible success that might result after protracted litigation on Plaintiffs' Petition for Enforcement and for Contempt and Motions to Modify. The proposed Modified Consent Decree protects the interests of the Plaintiff class and is fair, reasonable, and adequate. It does not provide preferential treatment to any particular members or segments of the class, nor does it provide for

monetary relief to any members of the class. Finally, the parties have agreed to defer any consideration of attorney's fees until the conclusion of the judicial approval process. In short, the proposed Modified Consent Decree meets all requirements of Rule 23(e).

6. Plaintiffs' attorneys spent nineteen years attempting to obtain compliance with the terms of the Consent Decree and sixteen years attempting to obtain compliance with the Modification through meetings and discussions with Defendants and other child welfare professionals, filing responses to semi-annual compliance reports, media, legislation and working with children's Child in Need of Assistance (CINA) counsel. Counsel requested and obtained thousands of pages of DHR and BCDSS documents through three separate Public Information Act ("PIA") requests. Counsel reviewed dozens of cases presented by CINA counsel demonstrating violations of the Consent Decree and Modification and several hundred cases of children whose files were provided by BCDSS (1) in the wake of the use of the Gay Street office building for housing children and (2) by agreement to test the results of one month's (November 2007) Quality Assurance testing.

7. After unsuccessfully concluding six months of negotiations in 2006 with the prior administration and failed efforts to initiate negotiations with the new administration in 2007, Plaintiffs' counsel filed the Petition for Orders of Enforcement and to Show Cause Why Defendants Should Not Be Held in Contempt of Consent Decree, and Motions to Modify Consent Decree and Monitoring Order accompanied by a more than 400-page memorandum and, later, a more than 200-page Reply memorandum. In preparing for the negotiations and then for the filing of the Petition and Memoranda, Plaintiffs' counsel undertook a comprehensive review and analysis of the history of non-compliance with the Decrees and a comprehensive review and analysis of the current state of child welfare practice. With the assistance of local and national

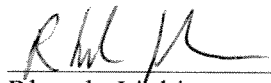
child welfare experts, Plaintiffs examined which portions of the current Consent Decree and Modification were and were not likely to achieve an improved child welfare system for Plaintiffs, which portions did and did not reflect best practices as currently understood in the child welfare field, and with which portions Defendants were and were not likely to ever achieve compliance.

8. From October 2008 through May 2009, the parties were actively engaged in negotiating the proposed Modified Consent Decree. In attendance at negotiation sessions were Mitchell Mirviss and Rhonda Lipkin, attorneys for the Plaintiffs; David Beller, Julia Bernhardt, and Millicent Edwards Gordon, attorneys for the Defendants; Secretary of DHR Brenda Donald; Director of BCDSS Molly McGrath; and the mediators, Judith Meltzer and Kathleen Noonan. The mediators were also the mediators in the parties' first negotiations in 2006, so they were very familiar, from the beginning, with the issues involved in the case and the attempts to reach compliance in the past. In January 2009 and thereafter, counsel for the Defendants were joined by Assistant Attorney General and Chief of Litigation, Austin Schlick, on behalf of the Defendants.

9. During the course of both the 2006 and current negotiations, Plaintiffs' counsel solicited and received input from local and national child welfare experts for both the initial drafting and the subsequent negotiations over the provisions. (The parties agreed that outside persons could be provided drafts of the draft settlement terms so long as they signed agreements binding them to the confidentiality terms of the negotiations.) Plaintiffs' counsel used that input, along with information provided regularly by children's CINA counsel and others as to current issues and concerns about the functioning of the foster care system in Baltimore City to draft proposals, negotiate terms, and make decisions about terms for the final settlement.

10. Plaintiffs' counsel have engaged in a detailed line-by-line, paragraph-by-paragraph comparison of the proposed Modified Consent Decree with the current Consent Decree. All of the substantive provisions of the current Consent Decree that are still applicable to today's conditions for Plaintiffs are in the proposed Modified Consent Decree, and many of them have been strengthened by the additional sections on Defendants' Responsibilities, the Additional Commitments and the Outcome Definitions. In addition, Plaintiffs' counsel's access to relevant information and access to Defendants to raise concerns and issues have been significantly expanded. The data collection and reporting processes have been substantially improved, as the Modified Consent Decree has a number of measures addressing accuracy and credibility, perhaps most significantly Defendants' agreement to hire Dr. Mark Testa, a nationally-renowned child welfare data collection and analysis expert. The enforcement process as well as the process for termination of and exit from the lawsuit is set forth clearly in the proposed Modified Consent Decree.

11. For the above reasons, I strongly believe that replacing the current Consent Decree with the proposed Modified Consent Decree and dismissing the pending Contempt Petition are in the best interest of the Plaintiff class.


Rhonda Lipkin

6/22/09
Date